

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

LUIS HUMBERTO ESTRADA-CANALES

v.

C.A. No. 97-114T

ATTORNEY GENERAL OF THE UNITED
STATES, IMMIGRATION AND
NATURALIZATION SERVICE, and
EXECUTIVE OFFICE FOR IMMIGRATION
REVIEW

MEMORANDUM AND ORDER

ERNEST C. TORRES, United States District Judge.

Background

Luis Humberto Estrada-Canales brought this action, pursuant to 28 U.S.C. § 1331, seeking a declaration that he is entitled to benefits provided by a class action settlement agreement set forth and approved in American Baptist Churches v. Thornburgh, 760 F. Supp. 796 (N.D. Cal. 1991) ("the ABC agreement").¹ Estrada also seeks to have the Attorney General and the Immigration and Naturalization Service ("INS") (collectively referred to as the "government") enjoined from continuing with proceedings to exclude him from the United States until the rights that he claims under the ABC agreement are honored.

¹In addition to federal question jurisdiction, Estrada also relies upon § 279 of the Immigration and Nationality Act, 8 U.S.C. § 1329, and the Declaratory Judgment Act, 28 U.S.C. § 2201, as a basis for jurisdiction. However, neither of those sections confers jurisdiction in this case.

The matter presently is before the Court for consideration of the government's motion to dismiss on the ground that this Court lacks jurisdiction to enjoin the exclusion proceedings "or alternatively" for summary judgment with respect to Estrada's claim of entitlement to ABC benefits.²

For reasons hereinafter stated, the motion to dismiss with respect to the claim for injunctive relief is granted; the motion for summary judgment with respect to the claim for declaratory relief is denied and the plaintiff is granted 20 days from the date of this Order in which to file a memorandum showing cause, if any exists, as to why his claim for declaratory judgment should not be dismissed without prejudice.

Background

The ABC agreement arose out of a class action challenging the manner in which the INS processed asylum claims filed by certain Salvadorans and Guatemalans. The agreement requires that all Guatemalans who entered the United States prior to October 1, 1990, and who, between July 1, 1991, and December 31, 1991, made written application for a "de novo, unappealable asylum adjudication before an Asylum Officer" are entitled to such an adjudication. American

²In its memorandum, the government expressly states that it does not question the Court's jurisdiction to issue a declaratory judgment. Therefore, it appears that the motion to dismiss is directed solely at the claim for injunctive relief and that the motion for summary judgment is directed solely at the claim for declaratory relief. Thus, the motions are not made in the "alternative."

Baptist Churches, 760 F. Supp. at 799-800 (ABC agreement ¶ 2). The agreement was provisionally approved on December 19, 1990, and it provides that individuals "apprehended at time of entry after the date of preliminary approval of this agreement shall not be eligible for the benefits hereunder." Id. at 800 (ABC agreement ¶ 2).

It is undisputed that Estrada entered the United States in 1985 and lived in Providence. In the late 1980's and early 1990's, he was employed, and his employer completed the forms necessary to permit him to remain in this country. It also is undisputed that he made timely application for a de novo asylum adjudication.

In 1995, while Estrada's asylum application was pending, he traveled to Guatemala to bring his children back to the United States. Four months later, upon his return, Estrada was detained by an INS inspector at Miami International Airport because he did not have an approved labor certification form. The inspector paroled Estrada into the United States so that the INS could conduct a further investigation. During this investigation, the INS learned that Estrada no longer was employed, and administrative exclusion proceedings were begun before the Executive Office for Immigration Review (EOIR).

Estrada argues that the exclusion proceedings violate his rights under the ABC agreement. He points to a provision in the agreement under which the government agreed "to stay or

administratively close the EOIR proceedings of any class member . . . whose cases were pending on November 30, 1990, until the class member has had the opportunity to effectuate his or her rights under this agreement." Id. at 805 (ABC agreement ¶ 19). Thus, Estrada argues that the exclusion proceeding may not be conducted until he has been afforded his de novo asylum adjudication.

The government contends that Estrada is not entitled to such an adjudication. More specifically, it argues that because, after investigation, the INS determined that Estrada was "apprehended at the time of entry," he is ineligible for ABC benefits. Estrada counters that his eligibility should be determined at the de novo adjudication before the asylum officer.

In any event, the government asserts that 8 U.S.C. § 1252(g) divests this Court of jurisdiction to enjoin the exclusion proceeding.

Discussion

I. Jurisdiction

It is difficult to understand why the government has chosen to litigate this matter rather than to afford Estrada an opportunity to appear before an asylum officer for a determination as to whether he is eligible for ABC benefits and whether his request for asylum should be granted. It does not appear that providing such an opportunity would impose a very onerous burden. Presumably, there are a very limited number of Guatemalans who were in this

country prior to October 1, 1990; filed written requests for de novo asylum determinations between July 1, 1991, and December 31, 1991; later left the country briefly; and were detained upon re-entering. Moreover, the ABC agreement does not require a formal hearing and it expressly states that the INS's decision is unappealable. Finally, Estrada's claim of entitlement to benefits of the ABC agreement has sufficient substance that it cannot be lightly dismissed as a baseless delaying tactic.

However, since the government has opted not to provide Estrada with a de novo determination and has elected, instead, to begin exclusion proceedings that inevitably have led to this litigation, the Court must determine whether it has jurisdiction to enjoin those proceedings. The answer to that question is found in 8 U.S.C. § 1252(g) which provides:

(g) **Exclusive Jurisdiction.** Except as provided in this section and notwithstanding any other provision of law, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

That provision was part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). While most of IIRIRA's provisions took effect on April 1, 1997, and do not apply to cases pending on that date, § 1252(g) applies to all cases pending on or filed after September 30, 1996. See IIRIRA §§

306(c)(1), 309(a), 110 Stat. 3009-612, 3009-625 (1996). Since Estrada's case was filed on March 4, 1997, it is subject to § 1252(g).

The Supreme Court has held that § 1252(g) "applies only to three discrete actions that the Attorney General may take: 'her decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" Reno v. American-Arab Anti-Discrimination Comm., 119 S. Ct. 936, 943, 142 L. Ed. 2d 940 (1999). It also held that the statute "deprives the federal courts of jurisdiction" regarding challenges to those actions. 119 S. Ct. at 947.

In general, Congress has authority to prescribe the jurisdictional limits within which the federal courts operate. See Sheldon v. Sill, 49 U.S. 440, 448 (1850). Here, no question has been raised as to whether applying § 1252(g) to Estrada's case amounts to an unconstitutional exercise of that authority.

It might be argued that, because the ABC agreement expressly entitles class members "to seek enforcement [of its provisions] by initiating a separate proceeding in any federal district court," American Baptist Churches, 760 F. Supp. at 810 (ABC agreement ¶ 35), the statute unconstitutionally impairs Estrada's rights under the agreement.³ However, Estrada has not made that argument.

³The Agreement provides that, with specified exceptions, "the Defendants will not contest the jurisdiction of such court to hear any such claim." Id. at 810 (ABC agreement ¶ 35).

Nor does it appear that Estrada has been deprived of the opportunity for judicial review regarding his entitlement to benefits under the ABC agreement. Although § 1252(g) precludes him from challenging the Attorney General's action in commencing proceedings, adjudicating cases or executing removal orders, Estrada retains the right to appeal to the Court of Appeals from any removal order that may emanate from the exclusion proceeding. See 8 U.S.C. § 1252(b)(2) & (9). Thus, in the exclusion proceeding, Estrada can argue that the proceeding must be closed until he is offered an opportunity to have his eligibility for ABC benefits and his asylum claim adjudicated. If that argument is rejected and a removal order is entered, he, presumably, will be able to raise the issue, on appeal.

In short, § 1252(g) divests this Court of jurisdiction to enjoin the exclusion proceeding, and there is no basis for concluding that the statute is unconstitutional.

II. Declaratory Judgment

The government concedes this Court's jurisdiction to issue a declaratory judgment regarding Estrada's eligibility for ABC benefits. However, under the Declaratory Judgment Act, 28 U.S.C. § 2201, the Court has discretion to determine whether that jurisdiction should be exercised. See Wilton v. Seven Falls Co., 515 U.S. 277, 286-88 (1995); Employers Mut. Cas. Co. v. Pic Contractors, Inc., 24 F. Supp. 2d 212, 215 (D.R.I. 1998). That

determination turns on "considerations of practicality and wise judicial administration." Wilton, 515 U.S. at 288. "The relevant inquiry is whether proceeding with the declaratory judgment action will result in piecemeal litigation, duplication of effort and the possibility of inconsistent results." Employers Mut., 24 F. Supp. 2d at 215.

In this case, any declaration regarding Estrada's entitlement or lack of entitlement to ABC benefits would be inconsistent with the dictates of practicality and wise judicial administration. It is clear that if Estrada is eligible for ABC benefits, he would be entitled to a de novo determination of his petition for asylum. It is equally clear that he is eligible unless his detention in Miami constitutes an "apprehen[sion] at the time of entry" into the United States.

The Court is not persuaded by the government's argument that, simply because Estrada left the United States for a period of four months, he should be considered to be "entering" the country when he returned. Although the parties have cited little law on the subject, common sense suggests that Estrada's return should not be deemed an "entry" unless his four-month absence constituted a "meaningful break" in his presence here. See In re Morales, Interim Decision 3259 at 16 n.4 (BIA 1995) (Rosenberg, Board Member, concurring). If anything, the facts that Estrada had resided here continuously since 1985; that he filed a petition for

asylum prior to departing; and that he left solely for the purpose of bringing his children back to the United States are strong indications that he was not "apprehended at time of entry."

Nor is the Court persuaded by the government's argument that the determination of a class member's eligibility may be made by the INS ex parte. The right to a de novo determination by an asylum officer in which the alien has an opportunity to be heard would be a hollow one if eligibility for such a determination could be decided without a similar opportunity.

In any event, because this Court has no jurisdiction to enjoin the exclusion proceeding, adjudicating Estrada's claim for a declaratory judgment would do nothing more than further snarl the procedural tangle that already exists. It would result in parallel litigation in which issues arising from a single dispute would be litigated in different fora, thereby resulting in duplication of effort and either piecemeal litigation or the possibility of inconsistent results or both. The only way to avoid such a hopeless tangle is for this Court to dismiss Estrada's claim for declaratory judgment without prejudice to his right to assert entitlement to ABC benefits in the exclusion proceeding.

Conclusion

For all of the foregoing reasons, the government's motion to dismiss Estrada's claim for injunctive relief is granted; the government's motion for summary judgment with respect to Estrada's

claim for declaratory relief is denied and Estrada's claim for declaratory relief shall be dismissed without prejudice unless, within 20 days, he shows cause, in writing, why dismissal is inappropriate.

IT IS SO ORDERED,

Ernest C. Torres
United States District Judge

Date: , 1999

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